



DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Office of Accountability and Whistleblower Protection (OAWP), Department of Veterans Affairs (VA).

ACTION: Notice of a New System of Records.

SUMMARY: As required by the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records known as the “Matter Tracking System (MTS)-VA,” (190VA70).

DATES: Comments on this new system of records must be received no later than 30 days after date of publication in the Federal Register. If no public comment is received during the period allowed for comment or unless otherwise published in the Federal Register by VA, the new system of records will become effective a minimum of 30 days after date of publication in the Federal Register. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Written comments may be submitted through www.Regulations.gov; by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1064, Washington, DC 20420; or by fax to (202) 273-9026 (not a toll-free number). Comments should indicate that they are submitted in response to the “Matter Tracking System (MTS)-VA,” (190VA70). Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-

4902 for an appointment. (This is not a toll-free number.) In addition, comments may be viewed online at www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT: Tanya Guimont, Supervisory FOIA Officer, Office of Accountability and Whistleblower Protection, 810 Vermont Ave NW, Mail Stop 70, Washington DC 20420; telephone (202) 461-6100. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Systems of Records

The MTS is an accountability matter management and reporting solution to fulfill the requirements of 38 U.S.C. § 323. Microsoft Dynamics 365 (MD 365) fulfills OAWP's need for an accountability matter management solution to track the office's workload and administrative functions. The MD Azure Cloud 365 application is hosted on the Federal Risk and Authorization Management Program (FedRAMP) High Government cloud.

II. Proposed Routine Use Disclosures of Data in the System

We are proposing to establish the following Routine Use disclosures of information maintained in the system. To the extent that records contained in the system include information protected by 38 U.S.C. § 7332 (i.e., medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, 38 U.S.C. § 5705 (i.e., quality assurance records); or

information protected 45 C.F.R. Parts 160 and 164 (i.e., individually identifiable health information), such information cannot be disclosed under a routine use unless there is also specific statutory authority permitting the disclosure.

1. VA may disclose information from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. VA must be able to provide information about individuals to adequately respond to inquiries from Members of Congress at the request of constituents who have sought their assistance.

2. VA may disclose information from this system to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. § 5724.

a. Effective Response. A federal agency's ability to respond quickly and effectively in the event of a breach of federal data is critical to its efforts to prevent or minimize any consequent harm. An effective response necessitates disclosure of information

regarding the breach to those individuals affected by it, as well as to persons and entities in a position to cooperate, either by assisting in notification to affected individuals or playing a role in preventing or minimizing harms from the breach.

b. Disclosure of Information. Often, the information to be disclosed to such persons and entities is maintained by federal agencies and is subject to the Privacy Act (5 U.S.C. § 552a). The Privacy Act prohibits the disclosure of any record in a system of records by any means of communication to any person or agency absent the written consent of the subject individual, unless the disclosure falls within one of twelve statutory exceptions. To ensure an agency is in the best position to respond in a timely and effective manner, in accordance with 5 U.S.C. § 552a(b)(3) of the Privacy Act, agencies should publish a routine use for appropriate systems specifically applying to the disclosure of information in connection with response and remedial efforts in the event of a data breach.

3. VA may disclose information in this system, except the names and home addresses of Veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute,

regulation, rule or order issued pursuant thereto. VA must be able to provide on its own initiative information that pertains to a violation of laws to law enforcement authorities for them to investigate and enforce those laws. Under 38 U.S.C. § 5701(a) and (f), VA may only disclose the names and addresses of Veterans and their dependents to Federal entities with law enforcement responsibilities. This is distinct from the authority to disclose records in response to a qualifying request from a law enforcement entity, as authorized by Privacy Act subsection 5 U.S.C. § 552a(b)(7).

4. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA must be able to provide information to DoJ in litigation where the United States or any of its components is involved or has an interest. A determination would be made in each instance that under the circumstances involved, the purpose is compatible with the purpose for which VA collected the information. This routine use is distinct from the authority to disclose records in response to a court order under subsection (b)(11) of the

Privacy Act, 5 U.S.C. § 552(b)(11), or any other provision of subsection (b), in accordance with the court's analysis in *Doe v. DiGenova*, 779 F.2d 74, 78-84 (D.C. Cir. 1985) and *Doe v. Stephens*, 851 F.2d 1457, 1465-67 (D.C. Cir. 1988).

5. VA may disclose information from this system of records to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement. This routine use includes disclosures by an individual or entity performing services for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA. This routine use, which also applies to agreements that do not qualify as contracts defined by Federal procurement laws and regulations, is consistent with the Office of Management and Budget (OMB) guidance in OMB Circular A-108, paragraph 6(j) that agencies promulgate routine uses to address disclosure of Privacy Act-protected information to contractors to perform the services contracts for the agency.

6. VA may disclose information from this system to the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation. VA

must be able to provide information to EEOC to assist it in fulfilling its duties to protect employees' rights, as required by statute and regulation.

7. VA may disclose information from this system to the Federal Labor Relations Authority (FLRA), including its General Counsel, information related to the establishment of jurisdiction, investigation, and resolution of allegations of unfair labor practices, or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; for it to address matters properly before the Federal Services Impasses Panel, investigate representation petitions, and conduct or supervise representation elections. VA must be able to provide information to FLRA to comply with the statutory mandate under which it operates.

8. VA may disclose information from this system to the Merit Systems Protection Board (MSPB), or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. §§ 1205 and 1206, or as authorized by law. VA must be able to provide information to MSPB to assist it in fulfilling its duties as required by statute and regulation.

9. VA may disclose information from this system to the National Archives and Records Administration (NARA) and General Services Administration (GSA) in records management inspections conducted under Title 44, U.S.C. NARA is responsible for archiving old records which are no longer actively used but may be appropriate for preservation, and for the physical maintenance of the Federal government's records.

VA must be able to provide the records to NARA to determine the proper disposition of such records.

10. Data breach response and remedial efforts with another Federal agency: VA may disclose information from this system to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

11. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

12. VA may disclose information from this system of records to a former VA employee or contractor, as well as the authorized representative of a current or former VA employee or contractor in pending or reasonably anticipated litigation, or in proceedings before any court, adjudicative, or administrative body, or in an action or proposed action by VA, when it is relevant or necessary to the litigation or administrative proceedings and one of the following is a party or has an interest in the actions described above:

- a) VA or any Component thereof;
- b) Any employee or former employee of VA in his or her official capacity;
- c) Any employee or former employee of VA in his or her individual capacity when VA has agreed to represent the employee; or

d) The U.S. Government or any agency thereof.

13. Federal Agencies, for Litigation: VA may, on its own initiative, disclose information to another federal agency, court, or party in litigation before a court or other administrative proceeding conducted by an agency, if VA is a party to the proceeding and needs to disclose the information to protect its interests.

14. VA may disclose information from this system of records to individuals and/or their representatives to provide updates on the status of an OAWP investigation, disclosure, allegations, and the outcome of that investigation. VA may also disclose information to VA employees regarding the status and outcome of a complaint made against them.

15. VA may disclose information from this system of records when requested from another agency as part of a mandatory background check of the employee. VA must be able to provide information to assist other agencies in its duties to conduct complete and thorough background checks as required by statute and regulation.

III. Compatibility of the Proposed Routine Uses

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which VA collected the information. In all the routine use disclosures described above, either the recipient of the information will use the information in connection with a matter relating to one of VA's programs, to provide a benefit to the VA, or to disclose information as required by law.

The disclosures of individually-identifiable health information contemplated in the routine uses published in this new system of records notice are permitted under the Privacy Rule or required by law. However, to also have authority to make such disclosures under the Privacy Act, VA must publish these routine uses. Consequently, VA is publishing these routine uses to the routine uses portion of the system of records notice stating that any disclosure pursuant to the routine uses in this system of records notice must be either required by law or permitted by the Privacy Rule, before VA may disclose the covered information.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director, Office of Management and Budget, as required by 5 U.S.C. § 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. James P. Gfrerer, Assistant Secretary for Information and Technology and Chief Information Officer, Department of Veterans Affairs, approved this document on December 20, 2019.

Dated: April 20, 2020.

Amy L. Rose,
Program Analyst,
VA Privacy Service,
Department of Veterans Affairs.

SYSTEM NAME AND NUMBER: Matter Tracking System (MTS)-VA, (190VA70)

SECURITY CLASSIFICATION: Unclassified

SYSTEM LOCATION: Department of Veterans Affairs (VA), Office of Accountability and Whistleblower Protection (OAWP), 810 Vermont Ave NW, Mail Stop 70, Washington DC 20420

SYSTEM MANAGER(S): FOIA Officer, Office of Accountability and Whistleblower Protection, 810 Vermont Ave NW, Mail Stop 70, Washington DC 20420; telephone at (202) 461-4119. (This is not a toll-free number.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: 38 U.S.C. § 323

PURPOSE(S) OF THE SYSTEM: The MTS is a matter management solution to assist in meeting the need for real-time reporting and tracking of incidents contemplated by the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017 (Pub. L. 115-41). The solution will allow OAWP to track workload and administrative functions. The system is an integral component of the OAWP information technology (IT) architecture and allows for more efficient operations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The MTS contains the following categories of individuals: Disclosing Party (DP), Whistleblowers, and Persons of Interest (POI). DPs are individuals who submit a matter to OAWP. Whistleblowers are DPs who are VA employees or applicants for employment that have submitted a disclosure which the individual reasonably believes evidences a violation of a law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety. Per 38 U.S.C. § 323, the Assistant Secretary of OAWP, cannot disclose the identity of a Whistleblower who is an employee without the employee's consent, unless otherwise provided for under law.

A POI is an individual who is alleged to have committed a violation of law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety. A POI could also be an individual against whom an allegation of whistleblower retaliation or senior leader misconduct or poor performance is made.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records and information in this system include submissions of disclosures, matters, persons of interest, disciplinary actions, and recommendations of the Government Accountability Office (GAO), the VA Office of Inspector General (OIG), the Office of Medical Inspector (OMI), and the Office of Special Counsel (OSC).

RECORD SOURCE CATEGORIES:

Information entered into the system by OAWP employees is obtained from VA employees, third parties (e.g., a Veteran, VA beneficiary, VA contractor, or private party), VA records, congressional, federal, state, and local offices or agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. VA may disclose information from this system in response to an inquiry from the congressional office made at the request of that individual.
2. VA may disclose information from this system to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.
3. VA may disclose information from this system, except the names and home addresses of Veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such

violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto. VA must be able to provide on its own initiative information that pertains to a violation of laws to law enforcement authorities for them to investigate and enforce those laws. Under 38 U.S.C. § 5701(a) and (f), VA may only disclose the names and addresses of Veterans and their dependents to Federal entities with law enforcement responsibilities. This is distinct from the authority to disclose records in response to a qualifying request from a law enforcement entity, as authorized by Privacy Act subsection 5 U.S.C. § 552a(b)(7).

4. VA may disclose information from this system to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative

body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA must be able to provide information to DoJ in litigation where the United States or any of its components is involved or has an interest. A determination would be made in each instance that under the circumstances involved, the purpose is compatible with the purpose for which VA collected the information. This routine use is distinct from the authority to disclose records in response to a court order under subsection (b)(11) of the Privacy Act, 5 U.S.C. § 552(b)(11), or any other provision of subsection (b), in accordance with the court's analysis in *Doe v. DiGenova*, 779 F.2d 74, 78-84 (D.C. Cir. 1985) and *Doe v. Stephens*, 851 F.2d 1457, 1465-67 (D.C. Cir. 1988).

5. VA may disclose information from this system to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement. This routine use includes disclosures by an individual or entity performing services for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA. This routine use, which also applies to agreements that do not qualify as contracts defined by Federal procurement laws and

regulations, is consistent with the Office of Management and Budget (OMB) guidance in OMB Circular A-108, paragraph 6(j) that agencies promulgate routine uses to address disclosure of Privacy Act-protected information to contractors to perform the services contracts for the agency.

6. VA may disclose information from this system to the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation.
7. VA may disclose information from this system to the Federal Labor Relations Authority (FLRA), including its General Counsel, information related to the establishment of jurisdiction, investigation, and resolution of allegations of unfair labor practices, or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; for it to address matters properly before the Federal Services Impasses Panel, investigate representation petitions, and conduct or supervise representation elections.
8. VA may disclose information from this system to the Merit Systems Protection Board (MSPB), or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. §§ 1205 and 1206, or as authorized by law.

9. VA may disclose information from this system to the National Archives and Records Administration (NARA) and General Services Administration (GSA) in records management inspections conducted under Title 44, U.S.C. NARA is responsible for archiving old records which are no longer actively used but may be appropriate for preservation, and for the physical maintenance of the Federal government's records.
10. VA may disclose information from this system to another Federal agency or Federal entity when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.
11. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.
12. VA may disclose information from this system of records to a former VA employee or contractor, as well as the authorized representative of a current or former employee or contractor of VA Attorneys representing individuals conducting litigation in pending or reasonably anticipated litigation, or in proceedings before any court, adjudicative, or administrative body, or in an action or proposed action by VA, when it is relevant or necessary to the litigation or

administrative proceeding, and one of the following is a party or has an interest in the actions described above: :

- a. VA or any Component thereof;
 - b. Any employee or former employee of VA in his or her official capacity;
 - c. Any employee or former employee of VA in his or her individual capacity when VA has agreed to represent the employee; or
 - d. The U.S. Government or any agency thereof.
13. VA may, on its own initiative, disclose information to another federal agency, court, or party in litigation before a court or other administrative proceeding conducted by an agency, if VA is a party to the proceeding and needs to disclose the information to protect its interests.
14. VA may disclose information from this system of records to individuals and/or their representatives to provide updates on the status of an OAWP investigation, disclosure, allegations and the outcome of that investigation. VA may also disclose information to VA employees regarding the status and outcome of a complaint made against them.
15. VA may disclose information from this system of records when requested from another agency as part of a mandatory background check of the employee. VA must be able to provide information to assist other agencies in its duties to conduct complete and thorough background checks as required by statute and regulation.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records within the Matter Tracker are stored on a FedRAMP cloud database, protected by certified “High” security controls.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information and records are retrieved by matter, disclosing party name, or person of interest name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records will be maintained and disposed of in accordance with VA Directive 6300. VA will use NARA regulations (36 CFR § 1234.6) for managing electronic records.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Information in the system is protected from unauthorized access through administrative, physical, and technical safeguards. Access to computerized information is restricted to authorized OAWP personnel on a need-to-know basis. Computer system documentation is maintained in a secure environment in the FedRAMP cloud database, protected by certified “High” security controls. Routine vulnerability reviews are conducted under the ‘Dynamics 365 for Government Assessing’ Authority to Operate.

RECORD ACCESS PROCEDURES:

An individual who seeks access to or wishes to contest records maintained under his or her name in this system must submit an email to oawpfoiarequests@va.gov.

CONTESTING RECORD PROCEDURES:

(See records access procedures above)

NOTIFICATION PROCEDURES: An individual who wishes to determine whether a record is being maintained under his or her name in this system must email oawpfoiarequests@va.gov.

EXEMPTIONS PROMULGATED FOR THE SYSTEM: Pursuant to subsection (k)(2) of the Privacy Act, 5 U.S.C. § 552a(k)(2), this system of records is exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Act.

HISTORY: None.

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